

# MUTUAL NON-DISCLOSURE AGREEMENT

(UTEP ([INSERT UTEP EMPLOYEE]) and [INSERT COMPANY])

This non-disclosure agreement (“Agreement”) entered into as of December 15, 2016, (the “Effective Date”) between The University of Texas at El Paso located at 500 W. University Ave., El Paso, TX 79968, a member institution of The University of Texas System (“University”) and [INSERT COMPANY], (“Company”), having an address located at [INSERT COMPANY ADDRESS]. University and Company may each be referred to as “Party” or collectively as the “Parties.”

## RECITALS

A. Company and University wish to exchange certain Confidential Information pertaining to research being conducted by UTEP faculty, [INSERT UTEP EMPLOYEE]. This exchange includes all communication of information between the Parties in any form whatsoever, including oral, written and machine readable form, pertaining to the above.

B. University and Company wish to exchange the Confidential Information for the sole purpose of discussing possible joint research opportunities and sharing research materials related to [INSERT PURPOSE HERE] (the “Purpose”) and each Party regards certain parts of the Confidential Information it possesses to be secret and desires to protect those parts from unauthorized disclosure or use (such secret parts being hereafter collectively referred to as “Confidential Information”).

C. University and Company are willing to disclose Confidential Information (as “Disclosing Party”) and receive Confidential Information (as “Receiving Party”) on the terms and conditions set forth herein.

## AGREEMENTS

Therefore, University and Company agree, as follows:

1. “Confidential Information” is proprietary and/or secret information owned or controlled by the Disclosing Party and which is discussed or disclosed during any meeting or discussions regarding the Purpose or otherwise disclosed in connection with the Purpose. Confidential Information includes, but is not limited to, all communications by Disclosing Party with the Receiving Party in any form whatsoever including oral, written and machine-readable form, video, audio, phonorecord, recorded media, drawings, schematics, samples, devices, software, formulas, biological materials, applications for intellectual property protection, services, processes, procedures, trade secrets, intellectual property, pricing, costs, business or strategic plans, and marketing or advertising strategies.

2. The Receiving Party shall only use Confidential Information for the Purpose. Specifically, but without limitation, the Receiving Party will not use any of the Confidential Information for any commercial purpose or development of any products or technology and shall not use or attempt to practice any invention arising from or disclosed in the Confidential Information, or any part thereof, without first entering into an agreement with the University permitting such use or practice.
3. The Confidential Information shall remain the sole property of the Disclosing Party.
4. Since the disclosure of Confidential Information by Disclosing Party is in strictest confidence, the Receiving Party covenants and agrees to:
  - a. Not disclose to any other person the Confidential Information of Disclosing Party, and use at least the same degree of care and discretion to maintain the Confidential Information secret as the Receiving Party uses in maintaining as secret its own Confidential Information, but always at least a reasonable degree of care and discretion;
  - b. Not disclose such Confidential Information to any third Parties or use, duplicate, reproduce, copy, distribute, or otherwise disseminate such Confidential Information, except as permitted pursuant to this Agreement;
  - c. Restrict disclosure of the Confidential Information of the Disclosing Party solely to those employees of Receiving Party having a need to know such Confidential Information in order to accomplish the Purpose stated above;
  - d. Advise each such employee, before he or she receives access to the Confidential Information, of the obligations of Receiving Party under this Agreement, and require each such employee to agree in writing to be bound by the terms of this Agreement, unless such employee is automatically bound thereby as an employee of Receiving Party;
  - e. Within thirty (30) days following request of Disclosing Party, return to Disclosing Party all documentation, copies, notes, diagrams, computer memory media, and other materials containing any portion of the Confidential Information, or confirm to Disclosing Party, in writing, the destruction of such materials.
5. Nothing in this Agreement shall be interpreted as placing any obligation or expectation of confidentiality or non-use on the part of the Receiving Party with respect to any portion of the Confidential Information received from Disclosing Party that:
  - (a) can be demonstrated to have been in the public domain as of the date of this Agreement, or comes into the public domain during the term of this Agreement through no fault of the Receiving Party;

- (b) can be demonstrated by tangible evidence to have been known to Receiving Party prior to disclosure by Disclosing Party and as to which the Receiving Party has no obligation not to disclose or use it;
- (c) is lawfully obtained by Receiving Party from a third Party under no obligation of confidentiality, and who did not acquire it, directly or indirectly, from the Disclosing Party under a continuing obligation of confidentiality;
- (d) can be demonstrated by tangible evidence to have been independently developed by Receiving Party without a violation of this Agreement and without use of or reference to the Disclosing Party's Confidential Information;
- (e) is generally disclosed by Disclosing Party to third Parties without a duty of confidentiality on the third Parties; or
- (f) is disclosed as required by law.

In the event any Confidential Information is required to be disclosed pursuant to governmental law, regulation, or judicial or administrative proceeding, Receiving Party shall provide prompt notice of such request to the Disclosing Party and shall cooperate fully in seeking a protective order or other assurance that confidential treatment will be accorded to the Confidential Information required to be disclosed, should Disclosing Party seek such order or assurance. In the event that such protective order or other remedy is not obtained, or that the Disclosing Party waives compliance with the provisions hereof, Receiving Party and its employees and agents agree to furnish only that portion of the Confidential Information of Disclosing Party which is legally required to be furnished. Furthermore, such Confidential Information shall continue to be considered and treated by the Receiving Party as Confidential Information for all other purposes. Confidential Information required to be so disclosed shall not be deemed part of the public domain by virtue of such disclosure.

6. This Agreement imposes no obligation on Receiving Party with respect to any portion of the Confidential Information disclosed by the Disclosing Party, unless such portion is:
  - (a) disclosed in a written document or machine readable media marked "CONFIDENTIAL" at the time of disclosure, or
  - (b) disclosed in any other manner and summarized in a memorandum submitted to Receiving Party within thirty (30) days of the disclosure.
7. NEITHER DISCLOSING PARTY MAKES ANY REPRESENTATION WITH RESPECT TO AND DOES NOT WARRANT ANY INFORMATION PROVIDED UNDER THIS AGREEMENT, BUT SHALL FURNISH SUCH IN GOOD FAITH. WITHOUT RESTRICTING THE GENERALITY OF THE FOREGOING, NEITHER DISCLOSING PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES, WHETHER WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED WITH RESPECT TO THE INFORMATION WHICH MAY BE PROVIDED HEREUNDER, INCLUDING WITHOUT

LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE. NEITHER DISCLOSING PARTY SHALL BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER RESULTING FROM RECEIPT OR USE OF THE INFORMATION BY THE RECEIVING PARTY.

8. The Receiving Party shall comply with all applicable federal, state and local laws and regulations in connection with its activities pursuant to this Agreement, including United States laws and regulations controlling the export of materials and information including technical data, drawings, know-how, computer software, laboratory prototypes and other items.
9. In the event of a breach or threatened breach or intended breach of this Agreement by either Party, the other Party, in addition to any other rights and remedies available to it at law or in equity, may be entitled to seek preliminary and final injunctions, enjoining and restraining such breach or threatened breach or intended breach, or requiring specific performance of the Party's obligations hereunder, even if monetary damages are available and readily quantifiable and without proof of actual damage.
10. The technical points of contact for transmitting Information in the case of University are:

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And in case of Company:

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Legal notices under this Agreement shall be sent in the case of University to:

Melissa Silverstein, Esq.  
Office of Technology Commercialization  
The University of Texas at El Paso  
Administration Bldg., Room 209  
500 W. University Ave.  
El Paso, TX 79968  
915-747-8030  
[nda@utep.edu](mailto:nda@utep.edu)

And in case of Company:

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11. The validity, construction, and performance of this Agreement are governed by the laws of the State of Texas.
12. If any mediation, litigation or other legal proceeding relating to this Agreement occurs, the prevailing Party shall be entitled to recover from the other Party (in addition to any other relief awarded or granted) its reasonable costs and expenses, including attorney's fees, incurred in the proceeding.
13. The rights and obligations of the Parties under this Agreement may not be sold, assigned or otherwise transferred. This Agreement shall not be amended or modified without mutual written consent of the Parties to such amendment or modification.
14. Neither Party may use the other Party's name without prior written consent.
15. Either Party may terminate this Agreement at any time without cause upon thirty (30) days written notice to the other Party, or for cause effective upon written notice to the other Party.
16. **LIMITATIONS.** COMPANY AND UNIVERSITY AGREE THAT THERE ARE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF UNIVERSITY (A TEXAS STATE AGENCY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS THAT MAY BE A PART OF THIS AGREEMENT, INCLUDING THE TEXAS PUBLIC INFORMATION ACT AS SET FORTH IN CHAPTER 552 OF THE TEXAS GOVERNMENT CODE. ACCORDINGLY, THE TERMS AND CONDITIONS OF THIS AGREEMENT ARE ONLY BINDING ON UNIVERSITY TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS. Company and University specifically agree that (i) neither the execution of this Agreement by University nor any other conduct, action or inaction of any representative of University relating to this Agreement constitutes or is intended to constitute a waiver of University's or the state's sovereign immunity to suit and (ii) Parties have not waived its right to seek redress in the courts.
17. This Agreement is binding upon both Company and University and upon the directors, officers, employees and agents of each. This Agreement is effective as of the Effective Date and will continue for a period of three (3) years, unless earlier terminated as provided herein. However, Receiving Party's obligations of confidentiality and restrictions on use of the Confidential Information disclosed by Disclosing Party, and all related remedies for breach thereof, shall survive expiration or termination of this Agreement.
18. This Agreement constitutes the entire and only agreement between the Parties for the confidentiality of Confidential Information related to the Purpose. Nothing herein requires either Party to proceed with any proposed transaction or relationship in connection with which the Confidential Information may be disclosed.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed by their duly authorized representatives.

**The University of Texas at El Paso**

\_\_\_\_\_  
Dr. Roberto Osegueda  
Vice President of Research

Date: \_\_\_\_\_

**[INSERT COMPANY]**

\_\_\_\_\_  
Name: \_\_\_\_\_

Date: \_\_\_\_\_

**Questions?**



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Email: [techtransfer@utep.edu](mailto:techtransfer@utep.edu)